



Ninety-Seventh Legislature - Second Session - 2002
Committee Statement
LB 862

Hearing Date: January 31, 2002
Committee On: Health and Human Services

Introducer(s): (Byars)
Title: Adopt the Cremation of Human Remains Act

Roll Call Vote – Final Committee Action:

Advanced to General File
X Advanced to General File with Amendments
Indefinitely Postponed

Vote Results:

6	Yes	Senator Jensen, Byars, Suttle, Price, Cunningham and Maxwell
	No	
	Present, not voting	
1	Absent	Senator Erdman

Proponents:

Senator Dennis Byars
Steve Brunken
Larry Stiverson
William Lauber

Representing:

Introducer
Nebraska Funeral Directors Association
Nebraska Cemetery Association
Nebraska Funeral Directors Association

Opponents:

John Lindsay

Representing:

Nebraska Association of Trial Attorneys

Neutral:

Representing:

Summary of purpose and/or changes: The bill provides for the licensure and regulation of crematories.

Section 1 names the Cremation of Human Remains Act.

Section 2 defines the following terms for purposes of the act: alternative container, authorizing agent, body parts, casket, cremated remains, cremated remains receipt form, cremation, cremation chamber, crematory, crematory authority, crematory operator, delivery receipt, department, holding facility, human remains, niche, temporary container, and urn.

Section 3 provides that a crematory for the cremation of human remains must be licensed, and must conform to all building codes and environmental standards or be exempt from such requirements because it was established prior to the effective date of the bill. A crematory may

be constructed on the property of or property adjacent to any cemetery or funeral establishment, or at any other location consistent with applicable zoning and environmental regulations.

Section 4 prescribes the licensure application process for crematories. The application to the Department of Health and Human Services Regulation and Licensure must contain the name of the applicant, address and location of the crematory, a certificate confirming that the crematory operator has attended a training course provided by the Cremation Association of North America or a manufacturer of the cremation chamber prior to issuance of the license, and the name and address of each owner of the crematory. The department may examine the premises and structure within 30 days after the application and must issue a license to the crematory authority if the applicant meets the requirements of the act. The applicant may appeal under the Administrative Procedures Act if the department does not issue a license within 60 days of the application or determines that a license should not be issued.

Section 5 requires a new owner of a crematory authority to provide their name and address to the department at least 30 days before the ownership change.

Section 6 requires a license for the operation of a crematory authority, which must be renewed every five years.

Section 7 provides that no person or entity may cremate human remains except a crematory licensed under the act.

Section 8 The right to authorize the cremation of human remains and the final disposition of cremated remains is governed by section 71-1339, subject to section 23-1824 and unless other directions have been given by the decedent in a testamentary disposition or a pre-need contract.

Section 9 requires receipt of a cremation authorization form or fax thereof, a completed and executed cremation/transit permit form or a cremation permit form, and a delivery receipt form as described in section 12 of the act before human remains may be cremated. Subsection (2) prohibits a crematory authority from accepting human remains for cremation without a proper label on the exterior of the alternative container or casket. Subsection (3) requires a crematory authority to retain copies of the cremation authorization form, cremation transit/permit form, cremated remains receipt form, delivery receipt form, and any other necessary records as required under the act for at least seven years after the cremation.

Section 10 prohibits a crematory authority from requiring that human remains be placed in a casket before cremation or be cremated in a casket, and from refusing to accept human remains if not in a casket. A crematory may only accept human remains if they are delivered in an alternative container or casket or delivered to the crematory authority's holding facility for placement in an alternative container or casket. Alternative containers must meet statutory requirements and must be cremated with the human remains. A crematory authority may refuse a non-combustible casket or any other container that does not meet statutory requirements or is not labeled as required in section 9 of the bill.

Section 11 prohibits the cremation of human remains with a pacemaker, defibrillator, or other potentially hazardous implant or condition in place. The authorizing agent is responsible for taking all necessary steps to ensure that such devices and conditions are removed or corrected prior to cremation. If the authorizing authority informs the funeral director and the crematory authority of the device or condition, the funeral director is responsible to remove or correct it before delivering the human remains to the crematory, and is liable for failure to do so. Bodies with such devices in the custody of the crematory authority must have them removed by a licensed embalmer at a funeral establishment within an embalming room unless the removal is to take place at a medical facility by the appropriate medical personnel.

Section 12 provides requirements for crematory authorities to hold human remains prior to cremation. Subsection (1) provides that the remains must be placed in a holding facility if the authority is not able to cremate the human remains immediately upon taking custody. Subsection (2) provides that a crematory authority cannot be required to accept a cremation container from which there is any evidence of leakage of body fluids from the human remains. Subsection (3) provides that unenballed human remains may not be held more than 24 hours from the time of death unless placed in a refrigerated facility in accordance with state law. Subsection (4) prohibits any unauthorized person to be in the crematory area or holding facility while any human remains are awaiting cremation, being cremated or being removed from the cremation chamber. Subsection (5) provides that no more than one person may be cremated at the same time unless the crematory authority has specific written authorization from the authorizing agent. Subsection (6) requires all recoverable residue of the cremation process to be removed from the cremation chamber upon completion of the cremation.

Section 13 provides for the disposition of cremated remains. Such remains with proper identification must be placed in an uncontaminated temporary container or urn selected or provided by the authorizing agent. If the remains will not fit in the container or urn, the remainder must be returned to the authorizing agent in a separate identifiable container. For shipping, the container or urn must be packed securely in compliance with shipper requirements and shipped only by a method which has an internal tracking system that provides for a signed receipt by the person accepting delivery of the remains, unless otherwise authorized by the authorizing agent.

Section 14 provides that delivery of cremated remains to the authorizing agent constitutes final disposition for purposes of the act. On and after the effective date of the bill, if the authorizing agent or his or her representative has not arranged for final disposition or claimed such remains for final disposition within 60 days after the cremation, the funeral establishment or crematory authority may dispose of the remains and be relieved of any legal obligation or liability concerning the remains. Cremation remains must be delivered or released by the crematory authority to the representative specified by the authorizing agent on the cremation authorization form. A cremated remains receipt form, containing the name of the deceased and the date, time and place of the receipt, must be signed by the representative receiving the remains and a representative of the crematory authority. Shipping forms required under section 13 will suffice if the cremated remains are to be shipped. Both the delivering and receiving parties must retain a copy of the form. After delivery, the remains may be freely transported in the state without a permit.

Section 15 relates to the cremation authorization form. Subsection (1) provides that a person who signs the form warrants the truthfulness of any facts on the form, and is personally liable for all damages resulting from incorrect or misleading information on the form. Subsection (2) authorizes a crematory authority to cremate human remains when it receives the form signed by the authorizing agent and a completed cremation permit as required by law. A crematory authority is immune from liability for cremating human remains pursuant to such authorization or for releasing or disposing of the cremated remains pursuant to such authorization. Subsection (3) provides that the crematory authority is not responsible or liable for any valuables delivered with the human remains. Subsection (4) provides that a crematory authority is not liable for refusing to accept human remains or performing cremation (a) until it receives a court order or other suitable confirmation that a dispute has been settled, or (b) for any lawful reason. Subsection (5) provides that a crematory authority or funeral establishment may refuse to release

cremated remains (a) if a crematory authority or funeral establishment is aware of any dispute concerning the release or disposition of cremated remains, until the dispute is resolved, or (b) for any lawful reason. Subsection (6) provides immunity from liability for refusing to release or dispose of cremated remains in accordance with this section.

Section 16 permits the department to adopt and promulgate rules and regulations governing the cremation of human remains, which must include conditions under which the human remains of a person who has died from an infectious, contagious, communicable, or dangerous disease can be transported to a crematory, and minimum sanitation standards for crematories.

Section 17 permits a crematory authority to enact reasonable bylaws for the management and operation of a crematory that are consistent with or more stringent than requirements of the act.

Section 18 provides penalties for violations of the act. Maintaining or operating a building or structure as a crematory in violation of the act or rules and regulations under the act is a public nuisance and may be abated as such. Holding oneself out as a crematory authority without being licensed under the act or performing cremation without an authorization form or cremation permit, signing a cremation authorization form with actual knowledge that the form contains false or incorrect information, or violation of any other provision of the act is a Class III misdemeanor.

Section 19 provides that the bill must be construed and interpreted as a comprehensive cremation law and that provisions of the act must take precedence over existing laws or rules and regulations that govern dead human bodies and human remains that do not specifically address cremation.

Section 20 amends section 71-1301 to delete a provision with reference to cremation as a “final disposition of a dead human body the same as internment.”

Section 21 amends section 71-1339 and changes the order of vesting provided for control of the disposition of a deceased persons. The order in which such control vests, unless other directions are given by the decedent, is: (1) the surviving spouse of the decedent, (2) the decedent’s surviving children, (3) the decedent’s surviving parents, (4) the persons in the next degree of kinship under the laws of descent and distribution to inherit the decedent’s estate, (5) a guardian of the person of the decedent at the time of their death, (7) the personal representative of the decedent, or (8) a representative of an entity described in section 71-1340 that has arranged with the funeral establishment or crematory authority to cremate a body part in the case of body parts received from such entity described in that section.

Explanation of amendments, if any: The committee amendment (AM 2689) becomes the bill. It reproduces substantive provisions of the original bill, and includes several additional sections to parallel provisions of the Health Care Facility Licensure Act.

New sections are added relating to the requirement that crematory authorities be licensed (section 3), application for licensure (section 5), changes in location, ownership, or name of a crematory authority (section 6), license expiration (section 7), provisional licensure (section 8), license fees (section 9), inspections (sections 10 and 11), complaints against a licensed crematory authority (section 12), emergency temporary license suspension (section 13), discipline of a license (sections 14 through 17), reinstatement of licenses that have been disciplined (section 18), and criminal penalties for violations of the act (section 19).

The committee amendment also makes various technical corrections and clarifications in provisions of the original bill.

Senator Jim Jensen, Chairperson